

**Meeting Date:** 5/31/2016

**Report Type:** Consent

**Report ID:** 2016-00628

**Title: Agreement: Golden 1 Center - Plaza Assignment and Construction of Improvements Agreement**

**Location:** District 4 - Downtown

**Recommendation:** Pass a Motion authorizing the City Manager or his designee to execute the Plaza Assignment and Construction of Improvements Agreement with Sacramento Downtown Arena LLC, SG Downtown LLC, and Turner Construction to construct site improvements for the portion of the plaza on City-owned arena land as required by the Arena Design and Construction Agreement (ADACA).

**Contact:** Desmond Parrington, ESC Project Manager, (916) 808-5044, Office of the City Manager

**Presenter:** None

**Department:** City Manager

**Division:** Executive Office

**Dept ID:** 02001011

**Attachments:**

1-Description/Analysis

2-Plaza Agreement

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**City Attorney Review**

Approved as to Form

Matthew Ruyak

5/25/2016 4:57:12 PM

**Approvals/Acknowledgements**

Department Director or Designee: John Dangberg - 5/25/2016 4:14:24 PM

## Description/Analysis

Issue Detail: Staff is seeking Council approval of the Golden 1 Center Assignment and Construction of Improvements Agreement. Under the terms of the agreement, Sacramento Downtown Arena LLC (ArenaCo) assigns its responsibility for the development of the portion of the plaza on the City-owned arena parcel to SG Downtown LLC (SG), a partnership between the Kings and JMA Ventures LLC, and Turner Construction Company. SG has retained Turner to perform the work set out in the agreement. The work includes paving, fabrication and installation of precast concrete benches, landscaping, stairs, drainage, waterproofing and electrical work.

As required under the ADACA and State law (Ca. Civil Code section 9550 *et seq*), payment and performance bonds must be secured for public works projects. Because the arena work and the plaza work are being performed under separate contracts, bonds are required for the plaza work on the City land. This agreement will enable ArenaCo to fulfill its obligations under the ADACA by having SG secure payment and performance bonds for the plaza work.

Policy Considerations: Payment and performance bonds are required for all work set forth in the ADACA. The ADACA was approved by Council on May 20, 2014.

Economic Impact: Not applicable.

Environmental Considerations:

California Environmental Quality Act (CEQA): This agreement is administrative in nature and does not create any new impacts. Furthermore, the proposed agreement is part of the Entertainment and Sports Center (P13-065) project, for which the City Council has certified an environmental impact report and adopted a mitigation-monitoring program and findings of fact and a statement of overriding conditions. Copies of the final EIR and the draft EIR are available at the ESC website: [www.cityofsacramento.org/arena](http://www.cityofsacramento.org/arena) as well as on the Community Development Department's webpage at: <http://portal.cityofsacramento.org/Community-Development/Planning/Environmental/Impact-Reports>.

Sustainability Considerations: Not applicable.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: ArenaCo is responsible for all development on the City-owned arena land as set forth in the ADACA. Because the plaza work is being performed under a separate plaza contract between SG and Turner Construction to which ArenaCo is not a party, additional payment and performance bonds are required for the portion of the plaza work on the arena land. This agreement: 1) acknowledges the assignment of the plaza work from ArenaCo to SG and Turner; and 2) provides the scope and budget for the portion of the work on the arena land in order to secure payment and performance bonds for that work.

Financial Considerations: There is no financial impact to the City. The City Council already approved the City's total contribution of \$255 million for the construction of the Golden 1 Center and the portion of the plaza on the City-owned arena land. There is no additional cost to the City associated with this agreement.

Local Business Enterprise (LBE): Not applicable.

<p>Recorded for the Benefit of the City of Sacramento - Fee Exempt Pursuant to Government Code Section 6103</p> <p>When Recorded, Mail To:</p> <p>Office of the City Clerk  Historic City Hall  915 "I" Street 1st Floor  Sacramento, CA 95814</p>	<p>This Space for Recorder's Use</p>
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**PLAZA ASSIGNMENT AND  
CONSTRUCTION OF  
IMPROVEMENTS AGREEMENT**

THIS AGREEMENT dated \_\_\_\_\_ for identification purposes by and between the CITY OF SACRAMENTO, a municipal corporation ("City"), Sacramento Downtown Arena LLC, a Delaware limited liability company ("ArenaCo"), SG Downtown LLC, a Delaware limited liability company ("SG Downtown"), and Turner Construction Company ("Turner"), collectively referred to as (the "Parties").

**Background**

- A. On May 20, 2014, City and ArenaCo entered into the Arena Design and Construction Agreement (as amended, the "ADACA"), City Agreement No. 2014-0505, wherein ArenaCo, among other obligations, agreed to certain obligations for work on the real property identified in Exhibit A (the "Arena Land").
- B. ArenaCo shall assign its rights and obligations to construct work on the Arena Land to SG Downtown and Turner.
- C. SG Downtown has contracted with Turner pursuant to a Construction Agreement (the "Construction Contract") dated January 16, 2016, to construct a pedestrian walkway and plaza, a portion of which is located on the Arena Land.
- D. In addition to any requirements under California law, the ADACA requires ArenaCo to provide a performance bond and payment bond to the City for Work done on the Arena Land.

**With these background facts in mind, the Parties agree as follows:**

- 1. **Assignment from ArenaCo to SG Downtown:** In accordance with the ADACA, ArenaCo assigns its rights and obligations to SG Downtown and Turner, and SG Downtown and Turner accept such assignment to have Turner construct on the Arena Land the work identified in Exhibit B ("the "Work").
- 2. **Construction of Work:** ArenaCo, SG Downtown, and Turner agree to construct on the Arena Land the Work in accordance with all of the provisions of the ADACA and its exhibits.
- 3. **Time of Completion:** All of the Work shall be completed in accordance within the time period provided in the ADACA. If the Work is not completed within this time period, City shall mail ArenaCo, SG Downtown, and Turner a written notice of default. City shall have the rights and remedies set forth in the ADACA., Any extension of time hereunder shall not operate to release the sureties of the bonds filed pursuant to this Agreement. In this connection, the sureties expressly waive the provisions of Section 2819 of the Civil Code of the State of California.

4. **Work to be Property of City:** The Work constructed or installed pursuant to this Agreement shall become the sole and exclusive property of the City, upon acceptance of the improvements by the City. Except as may be provided in Section 7(A), the improvements shall be constructed and installed by ArenaCo, SG Downtown, and Turner's sole cost, and no payment or compensation of any kind shall be made therefore by City. The Work shall not be deemed completed unless and until the improvements are free and clear of all liens and encumbrances of any kind or character whatsoever and are accepted in writing by the City.
5. **Guarantee of Public Improvements** ArenaCo, SG Downtown, and Turner guarantee and agree, at their sole cost, to remedy all defects in the Work arising from faulty or defective construction of the Work pursuant to the ADACA.
6. **Indemnity and Hold Harmless:** ArenaCo, SG Downtown, and Turner shall indemnify and save harmless City, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, cost, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, as a direct or indirect result of any negligent act or omission or willful misconduct of ArenaCo, SG Downtown, Turner, their officers, employees, contractors, subcontractors or agents in connection with performance or nonperformance of this Agreement, whether or not the City, its officers or employees reviewed inspected, accepted or approved any work or improvements performed or provided by ArenaCo, SG Downtown, and Turner, and whether or not the liabilities are litigated, settled or reduced to judgment. ArenaCo, SG Downtown, and Turner shall, upon City's request, defend at ArenaCo, SG Downtown, and Turner's sole cost any action, claim or suit, cause of action or portion thereof which asserts or alleges liabilities resulting directly or indirectly from any negligent act or omission or willful misconduct of ArenaCo, SG Downtown, and Turner, its officers, employees, contractors, subcontractors or agents in connection with the performance or nonperformance of this Agreement, whether the action, claim, suit, cause of action or portion thereof is well founded or not. In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to the City's negligence or willful misconduct, the City shall pay the portion of damages which is allocated to the City's negligence or willful misconduct provided that the City shall not be liable for any negligence of the City, its officers, or employees in reviewing, inspecting, accepting or approving any work or improvements performed or provided by ArenaCo, SG Downtown, and Turner. This Section 6 shall apply, without limitation, to any and all liabilities arising from or related to the payment of or failure to pay prevailing wages, by ArenaCo, SG Downtown, and Turner or by any of their contractors or subcontractors. The existence or acceptance by City if any of the insurance policies or coverage described in this Agreement shall not affect any rights City may have under this Section 6. The provisions of this Section 6 shall survive any termination or expiration of this Agreement.
7. **Security:** Concurrently with the execution of this Agreement, ArenaCo, SG Downtown, and Turner shall obtain and file with the City the following:
  - A. Improvement security in the sum of two million eight hundred forty-six thousand four hundred and ninety dollars (\$2,846,490), which sum is equal to one-hundred percent (100%) of the estimated cost of constructing the required Work on the Arena Land and the cost of any other obligation to be performed by ArenaCo, SG Downtown, and Turner hereunder, securing the faithful performance of this Agreement.
  - B. Separate improvement security in the sum of two million eight hundred forty-six thousand four hundred and ninety dollars (\$2,846,490), which sum is equal to one-hundred percent (100%) of the estimated cost of constructing the required Work on the Arena Land, securing payment to the contractor, their subcontractor and to persons furnishing labor, materials or equipment to them for the construction of the required improvements.The form of the improvement security shall be subject to the approval of the City Attorney. No change, alteration or addition to the terms of this Agreement or the plans and specifications accompanying this Agreement shall in any manner affect the obligation of providing improvement security pursuant to this Agreement.
8. **Insurance Requirements:** SG Downtown shall, at its sole expense, unless otherwise expressly agreed by the City in writing, procure and maintain (or cause to be procured and maintained by Turner, or appropriate contractors or vendors), in full force and effect insurance coverages appropriate for the Work done in the open space that is bounded by the west edge of 5th Street, J Street, 7th Street, and L Street the following insurance:

A. OCIP

Commercial general liability insurance (CGL) written on an “occurrence basis” policy form and covering liability for death, bodily injury, personal injury, and property damage with limits of \$75,000,000 per occurrence, relating, directly or indirectly, to SG Downtown’s operations, conduct, or use or occupancy of the Arena Land. Such coverage shall include all activities and operations conducted by any person on the Arena Land, and any work performed on or behalf of SG Downtown. SG Downtown shall meet the requirements of this section at all times during the performance of the work which will be satisfied as an enrolled participant in SG Downtown’s Owner Controlled Insurance Program (“OCIP”) as described herein. SG Downtown shall also require all of SG Downtown’s contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena Land to meet the CGL requirements of this section with limits of at least \$2,000,000 per occurrence and \$2,000,000 aggregate which may be satisfied during the performance of the work as an enrolled participant in the OCIP as described herein. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned or delayed).

The OCIP policy shall be endorsed to name the City and its respective officers, officials, employees, agents, and volunteers (the “City Parties”) as additional insureds with respect to liability arising out of work or operations performed by or on behalf of SG Downtown and its contractors, subcontractors, agents, representatives, and employees. Such additional insured coverage shall include completed operations and be provided by a CG2026 04/13 and a CG2037 04/13 endorsement. For any claims related to the Arena Land, the OCIP policy shall be primary insurance as respects the City Parties. Any insurance or self-insurance maintained by the City shall be excess of the OCIP policy(ies) and shall not contribute with them.

All OCIP excluded parties shall maintain CGL coverage for on-site and off-site operations with limits of a least \$2,000,000 per occurrence and \$2,000,000 aggregate at all times during the performance of the work.

In addition to the OCIP coverage and coverage required to be provided and maintained by excluded parties for operations at and away from the Arena Land, SG Downtown shall also require Turner, other contractors, subcontractors, vendors, agents, and representatives involved in work or operations on the Arena Land and enrolled in the OCIP to maintain CGL coverage of not less than the standard ISO CG 0001 Commercial General Liability (CGL) insurance policy form, including the following minimum coverage limits. Such insurance may be provided in any combination of primary and follow-form excess insurance:

Bodily injury liability and Property Damage including Products and Completed Operations coverage in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate.

Automobile Liability covering death, bodily injury, and property damage for the operation of all owned, non-owned, leased, and hired vehicles with limits of \$5,000,000 per accident. SG Downtown shall also require all of SG Downtown’s contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena Land to meet the Automobile Liability requirements of this section with limits of \$2,000,000 per accident. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

B. Workers’ Compensation Insurance

Workers’ Compensation insurance as required by the State of California with statutory limits and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. SG shall require all contractors, subcontractors, vendors, agents and representatives involved in work or operations at the Arena Land to meet the Workers’ Compensation requirements of this section. Any deductibles or self-insurance retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

C. Pollution Insurance

Pollution insurance for the benefit of the City and covering first and third party claims with limits of \$5,000,000 each occurrence or claim and \$10,000,000 Policy Annual Aggregate. Any deductibles or self-insured retentions must be declared and approved by the City (such approval not to be unreasonably withheld, conditioned, or delayed).

D. General Provisions for SG Downtown's Insurance.

1. The obligations' of SG set forth in this Section are independent of SG Downtown's indemnification, or other obligations under this Agreement and shall not be construed or interpreted in any way to restrict, limit, or modify SG Downtown 's waiver, indemnification, or other obligations or to in any way limit SG Downtown 's liability under this Agreement.
2. All insurance policies required under this Agreement (including endorsements thereto) shall, unless otherwise expressly agreed by the City in writing, be issued by insurance companies authorized to do business in the State of California and rated "A-VIII" or better by A.M. Best Company (or equivalent).
3. Except as otherwise provided in the OCIP, all CGL policies required under this Agreement shall be endorsed to name the City Parties as additional insureds with respect to liability arising out of work or operations performed by or on behalf of SG Downtown and its contractors, subcontractors, agents, representatives, and employees. Such additional insured coverage should include completed operations and be provided by an endorsement (at least as broad as ISO Form CG 20 10 11 85 or through the combination of GC2038 04/13 and CG2037 04/13). For any claims related to the Arena Land, all CGL policies shall be primary insurance as respects the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of the required CGL policies and shall not contribute with them. SG Downtown shall maintain the above additional insured coverage (including Products/Completed Operations) for an additional ten years beyond the expiration or earlier termination of this Agreement. SG Downtown shall require all other contractors, subcontractors, vendors, agents, and representatives involved in work or operations on the Arena Land to meet the requirements of this section.
4. SG Downtown 's automobile liability policy shall contain or be endorsed to contain the City Parties as additional insureds with respect to liability arising out of the operation of all owned, non-owned, leased, and hired vehicles. Additional insured coverage can be provided in the form of an endorsement to SG Downtown's insurance (at least as broad as ISO Form CA2048 Designated Insured Endorsement). For any claims related to automobile liability, the automobile liability policy shall be primary insurance as respects the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of the required automobile liability insurance and shall not contribute with it. SG Downtown shall require all contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena to meet the requirements of this section.
5. SG shall require its insurers to waive rights of subrogation against the City Parties, which any insurer of SG Downtown may acquire by virtue of the payment of any loss. SG Downtown shall obtain any endorsements that may be necessary to effect this waiver of subrogation. Workers' Compensation policies required under this Agreement shall be endorsed with a waiver of subrogation in favor of the City Parties, for all work performed. SG Downtown waives any claims against the City Parties, to the extent such claims are covered by the insurance required by this Agreement (or would have been so covered if such insurance was procured and maintained as required in this Agreement), and such insurance shall not prohibit the foregoing waiver. SG Downtown shall require Turner and all contractors, subcontractors, vendors, agents, and representatives involved in work or operations on the Arena Land to (i) to obtain such a waiver of subrogation in favor of SG Downtown, the City Parties, from their respective insurers, and (ii) to waive any claims against SG, the City Parties, to the extent such claims are covered by the insurance required by this Agreement (or would have been so covered if such insurance was procured and maintained as required in this Agreement), and such insurance shall not prohibit the foregoing waiver.
6. If any coverage required is written on a claims-made coverage form:
  - (a) The retroactive date must be shown, and this date must be before the execution date of the beginning of Work.
  - (b) Insurance must be maintained and evidence of insurance must be provided for at least ten years after completion of Work.
  - (c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work, date, SG Downtown must purchase extended reporting period coverage for a minimum of ten years after completion of contract work and require all other contractors, subcontractors, vendors, agents, and representatives involved in the applicable work or operations at the Arena Land to do the same.
7. If SG Downtown or Turner or any of its contractors, subcontractors, vendors, agents, representatives, or employees involved in work on the Arena Land maintain higher limits than the minimums shown in this

Agreement, the City requires and shall be entitled to coverage for the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City. SG Downtown shall require all other contractors, subcontractors, vendors, agents, and representatives involved in work or operations at the Arena Land to comply with this section.

9. **Prevailing Wages:** ArenaCo, SG Downtown, Turner and their contractors and subcontractors, shall pay prevailing wages to any and all persons performing labor in connection with the construction or installation of the improvements, as required by Chapter 3.60 of the Sacramento City Code and the ADACA.
10. **Notices:** Any and all notices and demands by or from City or ArenaCo, SG Downtown, and Turner shall be in writing. Notices or demands to the City shall be addressed and mailed (or personally delivered) to City:

Desmond Parrington  
Senior Development Project Manager  
City of Sacramento  
915 I Street, Fifth Floor  
Sacramento, CA 95814

*With copies to:*  
Jeffrey Massey  
Senior Deputy City Attorney  
City of Sacramento  
915 I Street, Fourth Floor  
Sacramento, CA 95814

Notices or demands to ArenaCo, SG Downtown, and Turner may be mailed (or personally delivered) to ArenaCo, SG Downtown, and Turner at the following addresses:

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Arena Co and  
SG Downtown, LLC:

Attn: John Rinehart  
Sleep Train Arena  
One Sports Parkway  
Sacramento, CA 95814  
FAX No: (916) 928.6983

Turner:

Frank Dai Zovi, GM/VP  
Turner Construction  
1211 H Street  
Sacramento, CA 95814  
FAX No.: 916.444.9214

With copies to:

ICON Venue Group, LLC  
Attn: Tim Romani  
8101 East Prentice Avenue, Suite 900  
Greenwood Village, CO 80111  
Phone: (303) 796-2655  
FAX: 303-796-2658

Jeffrey Dorso  
Pioneer Law Group  
1122 S Street  
Sacramento, CA 95811  
Phone and FAX No. (916) 287.9500

11. **Assignment Prohibited:** This Agreement may not be assigned by ArenaCo, SG Downtown, or Turner unless approved in writing by City. Any attempt to assign this Agreement without City's written consent shall be void.
12. **ArenaCo, SG Downtown, and Turner Not Agents of City:** Neither ArenaCo, SG Downtown, Turner, nor any of their officers, employees, agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of this Agreement.

13. **Recording:** ArenaCo, SG Downtown, and Turner agree that City may record this Agreement in the Office of the Recorder of Sacramento County.
14. **Amendment; Waiver; Entire Agreement:** This Agreement may only be amended in a writing signed by all parties. The waiver by any party to this Agreement of a breach of any provision hereof shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement. This Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof, and any prior promises, representations or oral agreements not set forth herein are of no force or effect; provided, however, that this Agreement is not intended to, and shall not, cancel, supersede, modify, fulfill or otherwise affect any other written agreements to which the City is a party, or any permits, entitlements or other approvals issued by the City, unless specifically so provided herein or in such other written agreements, permits, entitlements or other approvals.

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15. **Authority:** The person or persons signing this Agreement, respectively, for ArenaCo, SG Downtown, and Turner below, hereby represents and warrants that he or she has full authority to execute this Agreement and to fully bind ArenaCo, SG Downtown, and Turner, respectively, thereby to all obligations and requirements of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**SACRAMENTO DOWNTOWN ARENA LLC, a**  
Delaware limited liability company  
By: Sacramento Basketball Holdings LLC, its  
Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2016

**SG DOWNTOWN, LLC, a**  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2016

**TURNER CONSTRUCTION COMPANY, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2016

\* Attach All-Purpose Acknowledgement Notary Certification(s) for Owner's Signature(s)

\*If the Owner is a corporation, the following two signatures are required:

(1) The first signature by either the Chairman of the Board, the President or any Vice President of the corporation; and

(2) The second signature by either the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of the corporation.

ORIGINAL APPROVED AS TO FORM:

CITY OF SACRAMENTO

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk



## Exhibit B Scope of Work

3/2/16

BP#	SCOPE OF WORK	SUBCONTRACTOR	Bond calc for City land work @24.5% of total cost
23B	RAILINGS AND MISCELLANEOUS METALS	NMI INDUSTRIAL	\$35,000
42	SITE CONCRETE (excludes offsite non colored concrete)	CONCRETE NORTH	\$1,763,495
	OFFSITE CONCRETE	NIC	
58	LANDSCAPE AND IRRIGATION	VALLEYCREST LANDSCAPE	
59	SITE PRECAST	STONE MASONRY	\$72,739
	Changes on the drawings for revision dated 12.16.15	STONE MASONRY	
71	WATERPROOFING	FD THOMAS	\$371,999
	EXPANSION JOINT	SONOMA FABRICATIONS	
	WOOD AT BENCHES	BURNETT	
	TRAFFIC COATINGS	RP COATINGS	
	PAINTING	VALDEZ PAINTING	
	SITE DRAINAGE		
	Drainage from planter drains and trench/slot drains on Arena side	PAN PACIFIC	\$29,289
	FIRE PROTECTION		
	<b>SUBTOTAL</b>		<b>\$2,272,521</b>
	SUBGUARD @ 1.15%		\$26,134
	GENERAL REQUIREMENTS		\$103,428
	GENERAL CONDITIONS		\$358,997
	PAYMENT AND PERFORMANCE BOND @ 0.78%	Excluded	
	FEE @ 2.1%		\$85,410
	OVERTIME CONTINGENCY		
	CONSTRUCTION CONTINGENCY @ 5%		
	<b>TOTAL GMP</b>		<b>\$2,846,490</b>